IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10/12/2003

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The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRL.R.C. No.1112 of 2003
and Crl.Rc.Nos., 1113 and 1114 of 2003
and
Crl.M.P.Nos.6864, 6865 and 6866 of 2003

State by
Assistant Commissioner of Police
Crime Record Bureau, Chennai
Inspector of Police,
R8 Vadapalani Cr.No.1466/01 .. Petitioner in all the
three Crl.R.Cs.

-Vs-

Saravanan .. Respondent (A2) in
Crl.R.C.No.1112/03
Prakash .. Respondent (A1)/

Vijay alias Vijayakumar .. Respondent (A3) in
Crl.R.C.No.1114/03

Criminal Revision Cases against the common order dated 18.7.2003
passed in Crl.M.P.Nos.1923/2003, 1928/2003 and 1930/2003 in P.R.C.No.22/2002
on the file of the XVII Metropolitan Magistrate,Saidapet, Chennai-15.

!For Petitioner : Mr. I.Subramanian, Public Prosecutor.

^For Respondents : Mr. S. Vadivel

:C O M M O N O R D E R

The only point raised in these three revision cases filed by the State
challenging the common order passed by the trial Court dated 18.7.2003 is that
the impugned order granting permission to the accused to cross-examine the
approver even before the committal, is clearly wrong as the same is against
the purpose of Section 306(4) Cr.P.C.

2. I have heard the Public Prosecutor as well as the counsel for the respondent.

3. This case relates to the offences under Section 67 of the Information Technology Act, Section 27 of the Arms Act, Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act 1986, Sections 5 and 6 of the Immoral Traffic (Prevention) Act and Sections 120-B, 506 and 397 I.P.C.

4. Several bail applications have been filed by the respondents and the same have been dismissed by this Court directing for expeditious committal by the committal Court and expeditious trial by the Sessions Court. At that stage, the accused 1 to 3 filed separate applications before the committal Court seeking that when an approver has been examined before the committal Court, the accused must be given opportunity to cross-examine the approver. The said request was objected to by the prosecutor on the basis of the judgment of the Supreme Court in RANADHIR BASU v. STATE OF W.B. (2000 S.C.C.(Cri) 587). However, the said applications were allowed by the committal Court mainly on the reason that allowing the accused to cross-examine the approver before the Committal Court would enable the committal Court to finish the committal proceeding soon and commit to the Sessions Court.

5. On a perusal of the impugned common order, it is noticed that the committal Court though would refer to the judgment of the Supreme Court in 2000 S.C.C.(Cri) 587 (cited supra), where it has been held that the accused cannot be given any permission to cross-examine the approver before the committal Court, chose to grant permission subject to some condition. The relevant observation of the Apex Court is as follows:
"From this observation it does not follow that the person who is granted pardon must be examined in the presence of the accused and that the accused has a right to appear and cross-examine him at that stage also. As pointed out by this Court in that case the object is to provide an opportunity to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him during his evidence at the trial. Considering the object and purpose of examining the person accepting tender of pardon as a witness is thus limited. The proceeding which takes place before the Magistrate at that stage is neither an inquiry nor a trial. Therefore, the submission of the learned counsel that Sudipa should have been examined as a witness in open court and not in the chamber and that while she was examined the Magistrate should have kept the accused present and afforded to them an opportunity to cross-examine Sudipa cannot be accepted. The phrase "examination of a witness" does not necessarily mean examination and crossexamination of that witness. What type of examination of a witness is contemplated would depend upon the object and purpose of that provision. Section 202 Cr.P.C. also contemplates examination of witness yet it has been held, considering the object and purpose of that provision, that the accused has no locus standi at that stage."

6. On a reading of the above observation, it is clear that the ratio decided by the Supreme Court is that the committal proceeding which takes place before the committal Court at that stage is neither an enquiry nor a

trial. Therefore, the contention that the accused must be given opportunity to cross-examine in the committal Court when the approver is examined cannot be accepted. The phrase "examination of a witness" does not mean examination and cross-examination of that witness. Therefore, it is clear that the accused cannot claim as a right to cross-examination.

7. The tender of pardon and its acceptance by the person concerned is a matter entirely between the court concerned and the person to whom it is made. The pardon proceeding which takes place before the Magistrate, as indicated in the Supreme Court judgment, is neither an enquiry nor a trial in which an opportunity must be given to the accused to show to the Court that the statement of the accused seeking pardon is not true. Only during the course of trial, the opportunity will be given to the accused to show to the Court that the approver's evidence at the trial is untrustworthy in view of the contradictions or improvements made by him by allowing the accused to cross-examine.

8. It is true that the Supreme Court in STATE OF H.P. v. SURINDER MOHAN (2000 S.C.C.(Cri) 400) would make the following observation: "Before or after the case was committed to the Sessions Court, the accused had not raised any objection that they were not permitted to cross-examine the approver, nor did they contend so when the approver was examined and cross-examined during the trial. Therefore, at the stage of final arguments, the accused cannot raise the said contention. Further, after cross-examining the approver in detail (trial), there is no question of failure of justice nor any prejudice being caused to the accused on account of that omission."

9. On the basis of this observation, it is argued by the counsel for the respondents that the accused even at the initial stage, has got right to objection in committing the case without permission to cross-examine an approver.

10. On a perusal of the entire judgment, it is clear that the Supreme Court has not decided the said question as a ratio to the effect that the accused has got a right to cross-examine the approver at the committal stage. On the other hand, it is clearly held on interpreting Section 306 that "at the time of investigation or inquiry into an offence, the accused cannot claim any right under law to crossexamine the witness. The right to cross-examination would arise only at the time of trial."

11. In view of the above observation, the impugned common order is held to be wrong. Consequently, the same is set aside. Thus, all the three Criminal Revision Cases are allowed. Crl.M.P.Nos.6864, 6865 and 6866 of 2003 are closed.

12. The committal Court shall forthwith commit the case to the Sessions Court without any further delay taking into consideration the earlier

direction given by this Court, to enable the Sessions Court to finish the trial as expeditiously as possible.

Index : Yes
Internet:Yes
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To
1) The XVII Metropolitan Magistrate, Saidapet, Chennai-15.
2) The Principal Sessions Judge, Chennai.
3) The Public Prosecutor, High Court, Madras.
4) The Assistant Commissioner of Police, Crime Record Bureau, Chennai.
5) The Inspector of Police, R8 Vadapalani Police Station, Chennai.